

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

WESTERN MISSOURI PUBLIC EMPLOYEES,)	
LOCAL 1812 AND MISSOURI STATE)	
COUNCIL 72, AMERICAN FEDERATION OF)	
STATE, COUNTY AND MUNICIPAL)	
EMPLOYEES,)	
)	
Petitioner,)	
)	
vs.)	Public Case No. 90
)	
JACKSON COUNTY, MISSOURI (DEPARTMENT)	
OF CORRECTIONS),)	
)	
Respondent.)	

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION

A petition requesting determination with respect to the appropriateness of a bargaining unit and majority representative status for a unit consisting of all the non-supervisory employees of the Department of Corrections of Jackson County, Missouri, was filed with the State Board of Mediation by Western Missouri Public Employees, Local 1812 and Missouri State Council 72, American Federation of State, County and Municipal Employees (hereinafter referred to as Petitioner).

It is the contention of Jackson County, Missouri (hereinafter referred to as Respondent) that a unit consisting of the non-supervisory employees of the Department of Corrections would be inappropriate and result in an over-proliferation of bargaining units in Jackson County, Missouri. Secondly, Respondent contends that any kind and all correctional officers included in the Petitioner's petition should be excluded for the reason that such officers are in fact police and therefore excluded pursuant to Section 105.510 RSMo. 1969 which states:

"Employees, except police, deputy sheriffs, Missouri state highway patrolmen, Missouri national guard, all teachers of all Missouri schools, colleges and universities, of any public body shall have the right to form and join labor organizations and to present proposals to any public body relative to salaries and other conditions of employment through the representative of their own choosing. . ."

Jurisdiction for the State Board of Mediation to hear and decide this matter is based upon Section 105.525 RSMo. 1969.

FINDINGS OF FACT

I.
IS A UNIT CONSISTING OF ALL THE NON-SUPERVISORY EMPLOYEES OF THE JACKSON COUNTY, MISSOURI, DEPARTMENT OF CORRECTIONS AN APPROPRIATE UNIT WITHIN THE MEANING OF SECTION 105.500 et seq., RSMo. 1969?

The Department of Corrections (hereinafter referred to as Department) is one of nine major departments having a director who is responsible to the Director of Administration of Jackson County and the County Executive of Jackson County. The Department has the responsibility of housing and detaining prisoners in the County Jail. These duties include such things as the feeding of prisoners, maintaining order, and transporting prisoners to and from courts and other correctional institutions and hospitals.

The Department is physically located in two locations. Prisoners are held for trial and serve short sentences on the eleventh through the fifteenth floors of the County Courthouse. In addition, the Department included the Community Corrections Center, which is across the street from the County Courthouse. This latter facility houses female inmates and male inmates who are on a work release program.

The individuals working within the Department are initially employed as are all other employees of the County. They are screened and tested by a personnel officer. All County employees are paid from the same payroll department and are covered by a merit system. All County employees have the same pension and health insurance plan.

Before an employee is hired and placed into a department, the employee must first be approved by the Department Director. The Department of Corrections is the only department that performs its own background checks concerning prospective employees. With the exception of the Sheriff's Department and some security personnel in the Park Department, the Department of Corrections is the only department whose employees work on a three shift, twenty-four-hour-day, seven-day-week basis. The Department of Corrections is the only department having employees on the eleventh through the fifteenth floors of the County Courthouse and is the only Department operating in the Community Corrections Center. The food service unit, including cooks, in the Department prepares food only for corrections personnel and inmates in both the Community Corrections Center and the eleventh through fifteenth floors of the County Courthouse. The food service unit of the Department does not prepare food for or provide food to any other department or employees, except in the case when public works employees happen to be working in the jail area. While there are numerous other County departments housed in the County Courthouse, such as the Collector's office, Recorder of Deed's office, Circuit Clerk's office, Assessor's office, County Legislature, etc., employees in these departments do not have access to the floors housing the jail and the personnel employed by the Department of Corrections. While the general public is free to come and go through the first ten floors of the County Courthouse building, this is not true on the upper five floors housing the Department. There are elevators, maintained by elevator operators within the Department which take passengers to the upper five floors housing the Department. There are other elevators which take other employees and the general public to the first ten floors of the County Courthouse building. When individuals who are not employed in the Department -- including other employees of County government as well as the general public -- wish to

gain access to the upper five floors of the building housing the Department, they must have an appointment. If they have an appointment, they are asked for identification at the control center, at which point they sign in and are escorted by an officer to the specified area where the visitor is going.

Administratively, all of the Department of Corrections employees, including the corrections officers, the sergeants, the justice procedures officers, the cooks, clerks, secretaries, maintenance employees, laundry workers and elevator operators are placed in the Department and under the ultimate direction and responsibility of the Director of the Department. Their shifts of work, their work place, their duties, and their supervision, all fall within the Department. Any adverse personnel action taken against any of those employees is initiated within the Department and will be handled by Department supervisory personnel including the Director. After the Director of the Department has acted, the employees, like other employees in other departments, have access to the merit system commission rules. The Director of the Department issues departmental memoranda concerning rules of conduct which govern only the employees of the Department of Corrections and no other employees.

II.

SHOULD CORRECTIONAL SUPERVISORS (SERGEANTS) BE INCLUDED IN AN APPROPRIATE UNIT?

The Petitioner seeks to include, while the Respondent would exclude, individuals employed in the classifications of correctional supervisors. While this is the official title of the classifications, witnesses for both the Respondent and the Petitioner, testifying throughout the proceeding, made it clear that these individuals are commonly referred to as sergeants. In terms of departmental supervisory hierarchy, there is a manager of detention who is immediately below the department director; below the manager of detention are shift administrators (commonly referred to as lieutenants). Below these

lieutenants are sergeants, justice procedures officers and corrections officers. The Petitioner concedes that the manager of detention and the shift administrators (lieutenants) exercise sufficient supervisory authority so as to exclude them from the appropriate unit. By the same token, there appears to be general agreement that the corrections officers and justice procedures officers are properly included in an appropriate unit. The question for resolution, therefore, is the inclusion or exclusion of the sergeants. In the course of their duties, sergeants perform the same duties as corrections officers. Thus sergeants, like corrections officers, feed inmates, mop the floor, participate in shake-downs, accompany inmates to court, and transport inmates to other institutions such as in Fulton and Jefferson City. Those employees whom the parties agree should be excluded from the unit, i.e. lieutenants, do not engage in these activities. If a corrections officer wishes to ask for time off or permission to leave early or come in late, he asks the shift administrator (lieutenant) for permission to do so. Both sergeants and corrections officers punch a timeclock, while neither lieutenants nor managers of detention punch a timeclock. At the conclusion of a pay period, timecards of employees are approved, okayed, or initialed by lieutenants rather than by sergeants. While sergeants can orally warn or reprimand a corrections officer, written warnings and all other types of discipline which can be noted in an employee's personnel file, can only be determined and imposed by a lieutenant or higher ranking personnel. A sergeant can suggest that a written reprimand be given to an employee, but before such action is taken, the lieutenant or higher ranking individual must look into the situation and decide whether the employee's personnel file should include written reference to the incident or to the adverse action taken against the employee.

III.

ARE CORRECTIONAL OR DETENTION PERSONNEL EMPLOYED BY THE JACKSON COUNTY, MISSOURI DEPARTMENT OF CORRECTIONS "POLICE"

OR "DEPUTY SHERIFFS" WITHIN THE MEANING OF SECTION 105.510 RSMo. 1969?

Prior to the adoption of the County Charter, which was adopted in November of 1970 and went into effect on January 1, 1973, corrections officers were classified as deputies, but have not been so classified since January of 1973. Deputy sheriffs are commissioned officers, while corrections officers and corrections personnel are not commissioned. Corrections Department personnel are not sworn to carry weapons or firearms, while deputy sheriffs are so sworn. Deputy sheriffs are issued and are required to wear uniforms, while Department personnel are not required to wear uniforms. Employees in the Department do not wear badges, but do possess an identification card. While deputy sheriffs are required to carry a firearm in the course of their duties, Department personnel do not carry a firearm in the ordinary course of their duties, but may be issued a firearm in the transportation of prisoners. Deputy sheriffs enforce State laws on a County-wide basis, while Department personnel do not perform that function.

The correctional officer is responsible for the security, the custody, the transportation of all inmates confined and transported by the Department.

CONCLUSIONS OF LAW

I.

The Respondent has strongly urged this Board to consider the serious problem of over-fragmentation of bargaining units in deciding this matter. Although the Missouri legislature has not set forth a provision concerning "over-fragmentation" in Section 105.500 et seq. RSMo. 1969, this Board would be remiss in its responsibility of deciding appropriate units if it did not confront this issue. The Board however must also take into consideration the phrase "clear and identifiable community of interest" in determination of an appropriate unit. Therefore, in deciding upon the configuration of the group to be

represented, a balance in this case must be struck between these two contending considerations.

The record supports the Respondent's position that the County's employees are integrated insofar as they are paid from the same payroll, share the same benefits and are covered by the merit system. However, the record as a whole clearly indicates that the employees within the Department operate independently of all other County employees. Those employees in the petitioned-for unit possess a unique community of interest based upon the distinct nature of their function, their separate supervision and work place, the lack of substantial interchange with other County employees. Therefore, the petitioned-for unit is an identifiable group with a separate community of interest, and there is a reasonable basis for separating the Department of Corrections from the rest of the County employees.

II.

In determining whether an individual should be classified as a supervisor, this Board considers the following seven factors:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees.
2. The authority to direct and assign the work force.
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees.
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees.
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees.
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.
7. The amount of independent judgment and discretion exercised in the supervision of employees.

Upon comparison of the aforementioned factors to the record in this case, it is clear that sergeants are not supervisors but mere lead men who are traditionally included in bargaining units.

III.

Section 105.510 RSMo. 1969, states:

"Employees, except police, deputy sheriffs, Missouri state highway patrolmen, Missouri national guard, all teachers of all Missouri schools, colleges and universities, of any public body shall have the right to form and join labor organizations and to present proposals to any public body relative to salaries and other conditions of employment through the representative of their own choosing. . ."

The Respondent has raised the issue that certain correctional officers may not join a labor organization because they are in essence police officers or deputy sheriffs and therefore barred from joining said organization by the language of Section 105.510 RSMo. 1969 supra.

A police officer has been defined as a member of the "police" which is an organized civil force for maintaining order, preventing and detecting crime and enforcing laws, the body of men by which municipal laws and regulations of the city, town, or district are enforced. Burke v. State, 47 S.E.2d 116 (1948).

As has been mentioned, the correctional officers are responsible for the security, custody and transportation of all inmates confined and transported by the Department. These employees are not responsible for maintaining order, preventing and detecting crime and enforcing laws, and therefore are not police.

The Respondent has cited State v. Gunn, 326 S.W.2d 314 (1959) as controlling in this matter. This we cannot find. In that case the employees of the jail are regulated by the Board of Police Commissioners of the City of St. Louis, the jail is a police-employing unit, and the jail turnkeys are specifically listed as police officers. The state legislature has specifically designated the turnkeys as police officers by enacting

the St. Louis Act. The state legislature has not seen fit to do this with regard to Jackson County and therefore the reasoning set forth in the Gunn case is not applicable in this instance.

DECISION

Pursuant to Section 105.525 RSMo. 1969, the State Board of Mediation finds the following unit to be appropriate:

All full time employees of the Department of Corrections of Jackson County, Missouri, but excluding the Director of the Department, Manager of Detention and shift Administrators (Lieutenants).

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation among the employees in the unit found appropriate, as early as possible, but not later than forty-five (45) days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period, because they were out ill or on vacation. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether (or not) they desire to be represented for the purpose of exclusive recognition by Western Missouri Public Employees, Local 1812, and Missouri State Council 72, American Federation of State, County and Municipal Employees.

It is hereby ordered that the Respondent shall submit to the Chairman of the State Board of Mediation, as well as to the petitioner, within seven days from the date of receipt of this decision, an alphabetical list of the employees in the unit determined above to be appropriate who were employed during the designated payroll period.

Entered this 22nd day of December, 1976.

MISSOURI STATE BOARD OF MEDIATION

(SEAL)

/s/ Michael Horn
Michael Horn, Chairman

/s/ Stanley W. Cox
Stanley W. Cox, Employer Member

/s/ Robert Missey
Robert Missey, Labor Member